

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

STEPHEN P. KELLY,

Plaintiff,

vs.

BENJAMIN C. SMITH,

Defendant.

CV 21-67-H-BMM-KLD

ORDER

United States Magistrate Judge Kathleen L. DeSoto entered her Findings and Recommendations in this case on December 8, 2021. (Doc. 7.) Judge DeSoto recommended that this matter should be DISMISSED for failure to state a claim; that the Clerk of Court should be directed to close this matter and enter judgment of dismissal; and that the Clerk of Court should be directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(4)(B) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. (*Id.* at 8.)

No party has filed an objection to the Findings and Recommendations. The Court has reviewed Judge DeSoto's Findings and Recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313

(9th Cir. 1981). The Court finds no error in Judge DeSoto's Findings and Recommendations and adopts them in full.

**IT IS ORDERED** that Judge DeSoto's Findings and Recommendations (Doc. 7) are **ADOPTED IN FULL**.

1. This matter is **DISMISSED WITH PREJUDICE** for failure to state a claim on which relief may be granted.
2. The Clerk of Court is directed to close this matter and enter judgment of dismissal.
3. The Clerk of Court is directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(4)(B) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith.

DATED the 10<sup>th</sup> day of February, 2022.



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Brian Morris, Chief District Judge  
United States District Court